

U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

DEC 06 2007

WILLIAM H. JOHNSON, CLERK

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

BARRY L. MANZEY

PLAINTIFF

VS.

CASE NO. 07-6090

NCO FINANCIAL SYSTEMS,
INC., NCO-MEDCLEAR AND
Medclr, Inc.

DEFENDANTS

COMPLAINT AND DEMAND
FOR JURY TRIAL

COMPLAINT AND DEMAND FOR JURY TRIAL

BARRY L. MANZEY, Plaintiff, in the above-entitled and captioned matter, by way of Complaint against the Defendants respectfully demand judgment of this Honorable Court against each Defendant, as follows:

INTRODUCTION

This is an action for damages against all Defendants for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"). Plaintiff seeks actual damages, statutory damages, punitive damages, costs and attorney's fees pursuant to the FDCPA.

JURISDICTION AND VENUE

Jurisdiction of this Court arises under 15 U.S.C. § 1692 (k) (b), 28 U.S.C. § 1337, 28 U.S.C. § 1332. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and 2202. Venue in this district is proper in that the conduct complained of occurred here and it is the district where Plaintiff resides. 18 U.S.C. § 1391.

PARTIES

Plaintiff, BARRY L. MANZEY, is a natural person residing in Hot Springs, Garland County, Arkansas.

Defendants, NCO FINANCIAL SYSTEMS, INC., NCO-MEDCLEAR and Medclr, Inc. are foreign corporations engaged in the business of collecting debts in this State.

Defendants, NCO FINANCIAL SYSTEMS, INC., NCO-MEDCLEAR and Medclr, Inc. are open "debt collectors" as defined by the F.D.C.P.A., 15 U.S.C. § 1692 (a)(6).

All Defendants are doing business in the State of Arkansas.

REQUEST FOR TRIAL BY JURY

Plaintiff requests a trial by jury.

REQUEST FOR EXEMPLARY/PUNITIVE DAMAGES

Plaintiff respectfully requests that this Court instruct the jury, as the trier of facts, that in addition to actual, statutory and/or compensatory damages, punitive or exemplary damages may be awarded against the Defendants under the provisions of the FDCPA.

REQUEST FOR COSTS OF LITIGATION AND ATTORNEY'S FEES

Plaintiff respectfully requests that this Court award Plaintiff his litigation expenses and other costs of litigation and reasonable attorney's fees incurred in this litigation, in accordance with the provisions of the FDCPA.

GENERAL FACTUAL BASIS

Defendants have placed a collection account on Plaintiff's credit report for an alleged debt that does not belong to him, and he has not incurred the debt that

Defendants have placed a collection account on Plaintiff's credit report for an alleged debt that does not belong to him, and he has not incurred the debt that Defendants have placed on his credit report from TransUnion Report or any other credit report from any credit agency.

In violation of the FDCPA, Defendants continued and continue to attempt to collect this alleged debt by listing these allege debts as unpaid collections of Plaintiff's credit reports.

As a result of these actions, Plaintiff has sustained actual damages, emotional distress and statutory damages.

All conditions precedent to the bringing of this action have been performed, waived or excused.

Plaintiff is a "consumer" as defined in the FDCPA.

COUNT I

VIOLATION OF THE FDCPA BY DEFENDANTS, NCO-FINANCIAL AND NCO-MEDCLEAR

Plaintiff restates and realleges each allegation made above as if set forth fully herein.

Defendants violated the FDCPA. Defendants' violations include, but are not limited, to the following:

- A. The Defendants violated 15 U.S.C. § 1692 e (2)(a) by misrepresenting the amount, character and status of a debt;
- B. The Defendants violated 15 U.S.C. § 1692 e (4) and § 1692 f by misrepresenting that none payment will result in a legal action and a judgment;

- C. The Defendants violated 15 U.S.C. § 1692 f by attempting to collect a debt which Plaintiff did not owe;
- D. The Defendants violated 15 U.S.C. § 1692 e (5) by threatening to take action that cannot legally be taken;
- E. The Defendants violated 15 U.S.C. § 1692 e (10) by using a false representation or deceptive means to attempt to collect a debt;
- F. The Defendants violated 15 U.S.C. § 1692 d by contacting Plaintiff with the intent to annoy, oppress, harass, abuse in the connection with the collection of a debt;
- G. The Defendants violate 15 U.S.C. § 1692 e (8) by communicating false credit information.

As a result of the above violations of the FDCPA, the Defendants, NCO FINANCIAL and NCO MEDCLEAR, are liable to the Plaintiff for Declaratory Judgment of their conduct violated the FDCPA, and for Plaintiff's actual damages, statutory damages, punitive damages and costs and attorney's fees.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants, NCO FINANCIAL SYSTEMS, INC., NCO MEDCLEAR and Medclr, Inc., for declaratory judgment that Defendants' conduct violated the FDCPA, and the declaratory and injunctive relief for such; actual damages; statutory damages pursuant to 15 U.S.C. § 1692 k; punitive damages; costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692 k; and for such other and further relief as may be just and proper.

Respectfully submitted,

BARRY L. MANZEY, Plaintiff

By: 

JUSTIN B. HURST

Ark Bar No. 2005021

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